

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   ANTHONY BROOKS,

Case No.: 3:19-cv-00623-MMD-WGC

4           Plaintiff,

**Order**

5   v.

6   NEVADA DEPARTMENT OF  
7   CORRECTIONS, et al.,

8           Defendants.  
9

10       Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),  
11 housed at Ely State Prison (ESP). On October 10, 2019, he filed a document titled "Notice of Intent  
12 Civil Rights Complaint 42 U.S.C. § 1983" as well as a request for an injunction. (ECF Nos. 1-1,  
13 1-2.) Plaintiff did not file a completed in forma pauperis (IFP) application for a prisoner, or pay  
14 the filing fee.

15       On October 11, 2019, the court issued an order advising Plaintiff he must submit a  
16 completed IFP application along with the required financial certificate, or pay the \$400 filing fee  
17 (\$350 filing fee and \$50 administrative fee). The court also advised Plaintiff that once he filed his  
18 completed IFP application and financial certificate or paid the fee, the court would screen his action  
19 under 28 U.S.C. § 1915(e)(2)(B) or 28 U.S.C. § 1915A, or both, which require dismissal of a  
20 complaint, or any portion thereof, that is frivolous or malicious, fails to state a claim upon which  
21 relief may be granted, or seeks monetary relief against a defendant who is immune from such  
22 relief. Plaintiff was cautioned that if the complaint is dismissed on screening, there will be no  
23

1 refund of the filing fee, and an inmate proceeding IFP is still required to pay the \$350 filing fee  
2 over time.

3 The court advised Plaintiff that it had undertaken a preliminary review of his complaint  
4 and found it likely it would be dismissed because he only named NDOC as a defendant, and NDOC  
5 is an arm of the state that cannot be sued under section 1983.

6 The court ordered the Clerk to send Plaintiff a copy of the instructions and application to  
7 proceed IFP for an inmate, and gave Plaintiff 30 days to either file his completed IFP application  
8 or pay the full \$400 filing fee, *and* to file an amended complaint. He was advised that a failure to  
9 timely file a completed IFP application or pay the filing fee and file an amended complaint would  
10 result in dismissal of his action. (ECF No. 3.)

11 On November 12, 2019, Plaintiff filed a document stating that NDOC had not yet  
12 provided him with his financial certificate so he could comply with the court's order, and requested  
13 a 30-day extension to comply. (ECF No. 4.) On the same date, he also filed a request to amend his  
14 petition, seeking to amend to include in place of NDOC, the Director of NDOC, ESP Warden  
15 Gittere, and ESP Mail Room Supervisor. He stated that a formal complaint would be issued upon  
16 the court's receipt of the required financial certificate. (ECF No. 5.) Under Local Rule 15-1,  
17 Plaintiff must attach a proposed amended pleading to the motion for leave to amend. It must be  
18 complete in and of itself, without reference to the superseded pleading. LR 15-1(a). Plaintiff did  
19 not include the proposed amended complaint, but instead stated it would be forthcoming at a later  
20 time.

21 On November 13, 2019, the court issued an order giving Plaintiff until December 13, 2019,  
22 to file his financial certificate and IFP application. (ECF No. 6.) On November 25, 2019, Plaintiff  
23 filed his financial certificate; however, it was not accompanied by the completed IFP application

1 for a prisoner. (ECF No. 7.) That same day, he also filed a request for a subpoena to produce  
2 security videos from September 27, 2019, November 17, 2019, and November 18, 2019. (ECF No.  
3 8.)

4 The Clerk shall **SEND** Plaintiff a copy of the IFP application for prisoners. Plaintiff's  
5 motion to amend (ECF No. 5) is **DENIED WITHOUT PREJUDICE**. Plaintiff's request for a  
6 subpoena (ECF No. 8) is likewise **DENIED WITHOUT PREJUDICE**. Plaintiff has until  
7 **DECEMBER 31, 2019**, to file: (1) his completed IFP application, and (2) his amended complaint.  
8 **THERE WILL BE NO FURTHER EXTENSIONS**. If Plaintiff fails to file these documents,  
9 this action will be dismissed without prejudice and the action will be administratively closed.

10 **IT IS SO ORDERED.**

11 Dated: December 2, 2019.

12 

13 William G. Cobb  
14 United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23